

**SENATE BILL No. 195**

By Committee on Public Health and Welfare

2-11

1 AN ACT concerning the state board of healing arts; relating to the  
2 licensure of acupuncturists.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. Sections 1 through 20, and amendments thereto, shall be  
6 known and may be cited as the acupuncture and oriental medicine  
7 practice act.

8 Sec. 2. As used in sections 1 through 20, and amendments thereto:

9 (a) "Act" means the acupuncture and oriental medicine practice act.

10 (b) "Acupuncture" means the insertion of fine metal needles through  
11 the skin at specific points on or near the surface of the body with or  
12 without the palpation of specific points on the body and with or without  
13 the application of electric current or heat to the needles or skin or both to  
14 treat human disease and impairment and to relieve pain. Acupuncture also  
15 refers to a form of health care that is based on a theory of energetic  
16 physiology that describes and explains the interrelationship of bodily  
17 organs or functions with an associated acupuncture point or combination  
18 of points that are stimulated in order to restore the normal function of the  
19 bodily organ or function.

20 (c) "Acupuncturist" means any person licensed by the board in the  
21 practice of acupuncture or oriental medicine and who provides for  
22 compensation or holds oneself out to the public as a practitioner of  
23 acupuncture or oriental medicine. Acupuncturists may collaborate with  
24 other health professionals in providing health care.

25 (d) "Biofeedback device" means an instrument that is used to detect  
26 and amplify internal physiological processes and mental functioning, but  
27 does not pierce or cut the skin.

28 (e) "Board" means the state board of healing arts.

29 (f) "Council" means the acupuncture and oriental medicine council.

30 (g) "Herbal and animal-based substances" means substances of  
31 animal, vegetable or mineral origin for health maintenance and the  
32 treatment of effects of disease.

33 (h) "Homeopathic preparations" means substances and drugs  
34 prepared according to the official homeopathic pharmacopoeia  
35 recognized by the United States food and drug administration.

36 (i) "NCCAOM" means the national certification commission for

1 acupuncture and oriental medicine. NCCAOM is a national organization  
2 that validates competency in the practice of acupuncture and oriental  
3 medicine through the administration of professional certification  
4 examinations.

5 (j) "Nutritional supplement" means a nutritional substance, including  
6 a concentrate or extract of such a substance.

7 (k) "Oriental medicine" means the distinct system of health care that  
8 uses health techniques of oriental medicine, both traditional and modern,  
9 to diagnose, evaluate, examine, manage and treat for the prevention, cure  
10 or correction of disease, illness, injury, pain or other physical or mental  
11 condition by controlling and regulating the flow and balance of energy,  
12 form and function to restore, promote and maintain health.

13 (l) "Physical modalities" means the use of any physical, chemical,  
14 electrical and other noninvasive modalities, including, but not limited to,  
15 heat, cold, air, light, gravity, water in any of its forms, sound, vibration,  
16 pressure, magnetism, electricity, electromagnetic energy, suction,  
17 therapeutic exercise and manual therapy.

18 (m) "Physician" means a person licensed to practice medicine and  
19 surgery under the Kansas healing arts act.

20 (n) "Practice of acupuncture" means the use of needles or of oriental  
21 medicine therapies for the purpose of normalizing energetic physiological  
22 functions including pain control and for the promotion, maintenance and  
23 restoration of health.

24 (1) Needles used in the practice of acupuncture shall only be  
25 prepackaged, single use and sterile acupuncture needles. These needles  
26 shall only be used on an individual patient in a single treatment session  
27 and disposed of according to federal standards for biohazard waste.

28 (2) The practice of acupuncture includes, but is not limited to:

29 (A) The use of physical modalities, procedures and devices, but does  
30 not include the practice of osteopathy pursuant to the Kansas healing arts  
31 act, and amendments thereto;

32 (B) the use, application or recommendation of therapeutic exercises,  
33 breathing and exercise techniques, meditation and the use of biofeedback  
34 devices;

35 (C) the practice of oriental medicine, but does not include  
36 dispensing or administering of any controlled substances as defined in  
37 K.S.A. 65-4101, and amendments thereto, or any prescription-only drugs;

38 (D) dietary and nutritional counseling based on traditional Chinese  
39 medical principles;

40 (E) the recommendation, administration or dispensing of food,  
41 vitamins, minerals, enzymes, homeopathic preparations, herbal and  
42 animal-based substances, amino acids or nutritional supplements; or

43 (F) the recommendation, administration or dispensing of substances

1 of Chinese herbology pursuant to the requirements of section 3, and  
2 amendments thereto.

3 (3) The practice of acupuncture does not mean:

4 (A) Osteopathic medicine and surgery or osteopathic manipulative  
5 treatment; or

6 (B) the practice of chiropractic as defined by article 28 of chapter 65  
7 of the Kansas Statutes Annotated, and amendments thereto.

8 Sec. 3. (a) (1) On and after July 1, 2012, except as otherwise  
9 provided in this act, and amendments thereto, no person shall practice  
10 acupuncture or oriental medicine unless such person possesses a current  
11 and valid acupuncture license issued under this act, and amendments  
12 thereto.

13 (2) On and after July 1, 2012, except as otherwise provided in this  
14 act, and amendments thereto, no person shall recommend, administer or  
15 dispense substances of Chinese herbology unless such person:

16 (A) Holds a current and valid acupuncture license pursuant to this  
17 act, and amendments thereto; and

18 (B) is a certified NCCAOM diplomate of Chinese herbology, a  
19 certified NCCAOM diplomate of oriental medicine or has otherwise  
20 demonstrated competency in Chinese herbology or oriental medicine as  
21 recognized by the council and approved by the board.

22 (b) (1) No person shall depict oneself orally or in writing,  
23 expressly or by implication, as a holder of a Kansas acupuncture license  
24 who does not hold a current and valid acupuncture license under this act,  
25 and amendments thereto.

26 (2) Only a person licensed under this act, and amendments thereto,  
27 as an acupuncturist shall be entitled to use the following titles, as  
28 appropriate: "Acupuncturist," "licensed acupuncturist," "oriental  
29 medicine practitioner," "practitioner of acupuncture," "practitioner of  
30 oriental medicine," abbreviations thereof or words similar to such titles or  
31 the designated letters "L.Ac."

32 (3) Nothing in this section shall be construed to prohibit an  
33 acupuncturist licensed under this act, and amendments thereto, from  
34 listing or using in conjunction with their name any letters, words,  
35 abbreviations or other insignia to designate any educational degrees,  
36 certifications or credentials which such licensed acupuncturist has earned.

37 (4) Only a person licensed as an acupuncturist under this act, and  
38 amendments thereto, shall be entitled, as appropriate, to represent oneself,  
39 in any manner, as specializing in or practicing any form of oriental  
40 medicine in the state of Kansas. This includes, but is not limited to,  
41 Chinese medicine, Asian medicine and traditional Chinese medicine.

42 Sec. 4. (a) Nothing in this act, and amendments thereto, is intended  
43 to limit, preclude or otherwise interfere with the practices of other health

1 care providers formally trained and licensed, registered, credentialed or  
2 certified by appropriate agencies of the state of Kansas from performing  
3 duties considered appropriate to their recognized scope of practice.

4 (b) The following shall be exempt from the requirement of an  
5 acupuncture license pursuant to this act, and amendments thereto:

6 (1) A person licensed by another health professional licensing board  
7 if the person confines the person's acts or practice to the scope of practice  
8 authorized by the other health professional licensing laws and does not  
9 represent to the public, directly or indirectly, that under this act, and  
10 amendments thereto:

11 (A) The person is licensed; or

12 (B) through the usage of a name, title, or other designation, the  
13 person indicates licensure;

14 (2) any herbalist or herbal retailer who does not hold oneself out to  
15 be a licensed acupuncturist;

16 (3) health care providers in the United States armed forces, federal  
17 facilities and other military service when acting in the line of duty in this  
18 state;

19 (4) any student, trainee, or visiting teacher of acupuncture, oriental  
20 medicine or Chinese herbology who is designated as a student, trainee or  
21 visiting teacher while participating in a course of study or training under  
22 the supervision of an acupuncturist licensed under this act, and  
23 amendments thereto, in a program that the council has approved. This  
24 includes continuing education programs and any acupuncture, oriental  
25 medicine or Chinese herbology programs that are a recognized route by  
26 the NCCAOM to certification in acupuncture, oriental medicine or  
27 Chinese herbology; and

28 (5) persons rendering assistance in the case of an emergency.

29 (c) This section shall take effect on and after July 1, 2012.

30 Sec. 5. (a) An applicant for licensure as an acupuncturist shall file  
31 an application, on forms provided by the board, showing to the  
32 satisfaction of the board that the applicant meets the following  
33 requirements:

34 (1) At the time of application such applicant is at least 18 years of  
35 age;

36 (2) (A) has the status of a NCCAOM certified diplomate of  
37 acupuncture;

38 (B) has the status of a NCCAOM certified diplomate of oriental  
39 medicine; or

40 (C) has an equivalent status as recognized by the council and  
41 approved by the board;

42 (3) demonstrates the ability to communicate in the English language  
43 as determined by regulations approved by the board if English is a second

1 language for the applicant; and

2 (4) has paid all the fees required for licensure prescribed in this act,  
3 and amendments thereto, which shall be nonrefundable.

4 (b) The board may issue a license to a person who has been in the  
5 active practice of acupuncture or oriental medicine in some other state,  
6 territory, the District of Columbia or other country upon certificate of the  
7 proper licensing authority of that state, territory, District of Columbia or  
8 other country certifying that the applicant is duly licensed, certified, or  
9 registered, that the applicant's license, certification, or registration has  
10 never been limited, suspended or revoked, that the licensee, certification  
11 or registration holder has never been censured or had other disciplinary  
12 action taken and that, so far as the records of such authority are  
13 concerned, the applicant is entitled to its endorsement. The applicant shall  
14 also present proof satisfactory to the board:

15 (1) That the state, territory, District of Columbia or country in which  
16 the applicant last practiced maintains standards at least equal to those  
17 maintained by Kansas;

18 (2) that the applicant's original license, certification or registration  
19 was based upon licensure, certification or registration requirements at  
20 least equal in quality to the state of Kansas licensure requirements  
21 pursuant to this section, and amendments thereto;

22 (3) of the date of the applicant's original and any and all endorsed  
23 licenses, certifications or registrations and the date and place from which  
24 any license, certification or registration was attained; and

25 (4) that the applicant has been actively engaged in acupuncture or  
26 oriental medicine under such license, certification or registration since  
27 issued, and if not, fix the time when and reason why the applicant was out  
28 of practice.

29 An applicant for license by endorsement shall not be granted a license  
30 unless such applicant's individual qualifications meet the state of Kansas  
31 requirements.

32 (d) A person whose license has been revoked may make written  
33 application to the board requesting reinstatement of the license in a  
34 manner prescribed by the board. An application for reinstatement of a  
35 license shall be accompanied by the fee provided for in section 8, and  
36 amendments thereto.

37 Sec. 6. (a) There is hereby created the designation of inactive  
38 license. The board is authorized to issue an inactive license to any  
39 licensee who makes written application for such license on a form  
40 provided by the board and remits the fee for an inactive license  
41 established pursuant to section 8, and amendments thereto.

42 (b) The board may issue an inactive license only to a person who  
43 meets all the requirements for a license to practice as an acupuncturist

1 and who does not engage in the active practice of acupuncture or oriental  
2 medicine in the state of Kansas.

3 (c) An inactive license shall not entitle the holder to engage in active  
4 practice. The provisions of section 7, and amendments thereto, relating to  
5 expiration, renewal, continuing education and reinstatement of a license  
6 shall be applicable to an inactive license issued under this subsection.  
7 Each inactive licensee may apply to engage in active practice by  
8 presenting a request required by section 5, and amendments thereto. The  
9 request shall be accompanied by the fee established pursuant to section 8,  
10 and amendments thereto.

11 (d) This section shall take effect on and after July 1, 2012.

12 Sec. 7. (a) Licenses issued under this act, and amendments thereto,  
13 shall expire on the date of expiration established by rules and regulations  
14 of the board unless renewed in the manner prescribed by the board. A  
15 request for the renewal of a license shall be accompanied by the renewal  
16 fee established pursuant to section 8, and amendments thereto.

17 (b) At least 30 days before the expiration of a licensee's license, the  
18 board shall notify the licensee of the licensure expiration by mail  
19 addressed to the licensee's last mailing address as noted upon the office  
20 records. If the licensee fails to submit an application for renewal of  
21 licensure on a form provided by the board, or fails to pay the renewal fee  
22 by the date of expiration, the board shall give a second notice to the  
23 licensee that the license has expired and the license may be renewed only  
24 if an application for renewal, a renewal fee, and a late renewal fee are  
25 received by the board within the 30-day period following the date of  
26 expiration and that, if both fees are not received within the 30-day period,  
27 the license shall be deemed canceled by operation of law and without  
28 further proceedings.

29 (c) The board may require any licensee to submit to a continuing  
30 education audit and provide to the board evidence of satisfactory  
31 completion of a program of continuing education required by rules and  
32 regulations of the board.

33 (d) Any license canceled for failure to renew may be reinstated upon  
34 recommendation of the board. An application for reinstatement of a  
35 license shall be on a form provided by the board, and shall be  
36 accompanied by payment of a reinstatement fee pursuant to section 8, and  
37 amendments thereto, and evidence of completion of any applicable  
38 continuing education requirements.

39 (e) The board, prior to renewal of a license, shall require the  
40 licensee, if in the active practice of acupuncture or oriental medicine  
41 within the state, to submit to the board evidence satisfactory to the board  
42 that the licensee is maintaining a policy of professional liability  
43 insurance. The board may require any licensee to provide to the board

1 evidence of malpractice insurance as required by rules and regulations of  
2 the board during an audit. The board shall fix by rules and regulations the  
3 minimum level of coverage for such professional liability insurance.

4 (f) This section shall take effect on and after July 1, 2012.

5 Sec. 8. (a) The board shall charge and collect in advance fees for  
6 acupuncturists as established by the board by rules and regulations, not to  
7 exceed:

8	Application for licensure.....	\$300
9	Annual renewal of license:	
10	Paper renewal.....	\$200
11	On-line renewal.....	\$200
12	Late renewal of licensure:	
13	Late paper renewal.....	\$100
14	Late on-line renewal.....	\$100
15	Revoked licensure reinstatement.....	\$325
16	Application for inactive license.....	\$300
17	Renewal of inactive license.....	\$75
18	Conversion of inactive license to active.....	\$150
19	Certified copy of license.....	\$25
20	Written verification of license.....	\$25

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22 (b) If an examination is not administered by the board, the board  
23 may require that fees paid for any examination under the acupuncture and  
24 oriental medicine practice act, and amendments thereto, be paid directly  
25 to the examination service by the person taking the examination.

26 Sec. 9. The board shall remit all moneys received by or for the board  
27 from fees, charges or penalties to the state treasurer in accordance with  
28 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt  
29 of each such remittance, the state treasurer shall deposit the entire amount  
30 in the state treasury. Twenty percent of such amount shall be credited to  
31 the state general fund and the balance shall be credited to the healing arts  
32 fee fund. All expenditures from the healing arts fee fund shall be made in  
33 accordance with appropriation acts upon warrants of the director of  
34 accounts and reports issued pursuant to vouchers approved by the  
35 president of the board or by a person or persons designated by the  
36 president.

37 Sec. 10. (a) There is established the acupuncture and oriental  
38 medicine council to assist the state board of healing arts in carrying out  
39 the provisions of this act, and amendments thereto. The council shall  
40 consist of five members, all citizens and residents of the state of Kansas  
41 appointed as follows:

42 (1) The board, with recommendation from the Kansas association of  
43 oriental medicine, shall appoint:

1 (A) Two members who are licensed as acupuncturists under this act,  
2 and amendments thereto; and

3 (B) one member who is licensed as an acupuncturist under this act,  
4 and amendments thereto, and is authorized to practice Chinese herbology  
5 pursuant to the requirements of section 3, and amendments thereto;

6 (2) one member shall be the president of the state board of healing  
7 arts or a person designated by the president; and

8 (3) the governor shall appoint one member from the public sector  
9 who is not engaged, directly or indirectly, in the provision of health  
10 services. Insofar as possible persons appointed to the council shall be  
11 from different geographic areas. If a vacancy occurs on the council, the  
12 appointing authority of the position which has become vacant shall  
13 appoint a person of like qualifications to fill the vacant position for the  
14 unexpired term, if any.

15 (b) The members of the council appointed by the governor shall be  
16 appointed for terms of three years and until a successor is appointed. The  
17 members appointed by the state board of healing arts shall serve at the  
18 pleasure of the state board of healing arts. If a member is designated by  
19 the president of the state board of healing arts, the member shall serve at  
20 the pleasure of the president.

21 (c) Acupuncturists initially appointed to the council must be eligible,  
22 as appropriate, for licensure pursuant to section 5, and amendments  
23 thereto. On and after July 1, 2012, new appointees, as appropriate, shall  
24 be licensed under the provisions of this act, and amendments thereto.

25 (d) The council shall meet at least once each year at a time and place  
26 of its choosing and at such other times as may be necessary on the  
27 chairperson's call or on the request of a majority of the council's  
28 members.

29 (e) A majority of the council constitutes a quorum. No action may be  
30 taken by the council except by affirmative vote of the majority of the  
31 members present and voting.

32 (f) Members of the council attending meetings of the council, or  
33 attending a subcommittee meeting thereof authorized by the council, shall  
34 be paid amounts provided in subsection (e) of K.S.A. 75-3223, and  
35 amendments thereto, from the healing arts fee fund.

36 Sec. 11. The acupuncture and oriental medicine council shall advise  
37 the board regarding:

38 (a) Examination, licensing and other fees;

39 (b) rules and regulations to be adopted to carry the provisions of this  
40 act, and amendments thereto;

41 (c) the number of yearly continuing education hours required to  
42 maintain active licensure;

43 (d) changes and new requirements taking place in the areas of



1 acupuncture and oriental medicine; and

2 (e) such other duties and responsibilities as the board may assign.

3 Sec. 12. The board, with the advice and assistance of the  
4 acupuncture and oriental medicine council, shall:

5 (a) Duly license and regulate applicants for licensure and keep a  
6 roster of all such licensed individuals;

7 (b) adopt rules and regulations as may be necessary to administer the  
8 provisions of this act, and amendments thereto, and prescribe forms  
9 which shall be issued in the administration of this act, and amendments  
10 thereto;

11 (c) establish standards for approval of an educational course of study  
12 and clinical experience;

13 (d) establish criteria for continuing education; and

14 (e) establish standards of professional conduct, procedure for the  
15 discipline of licensees and keep a record of all such proceedings.

16 Sec. 13. (a) The license of an acupuncturist may be limited,  
17 suspended or revoked, or the licensee may be censured, reprimanded,  
18 placed on probation, fined pursuant to K.S.A. 65-2863a, and amendments  
19 thereto, assessed costs incurred by the board in conducting any  
20 proceeding in which such licensee is the unsuccessful party, or otherwise  
21 sanctioned by the board, or an application for licensure or reinstatement  
22 of licensure may be denied if it is found that the licensee or applicant:

23 (1) Has committed an act of fraud or deceit in the procurement or  
24 holding of a license;

25 (2) has been convicted of a felony or class A misdemeanor in a court  
26 of competent jurisdiction, either within or outside of this state, unless the  
27 conviction has been reversed and the licensee discharged or acquitted or  
28 if the licensee has been pardoned with full restoration of civil rights in  
29 which case the license shall be restored;

30 (3) is addicted to or has distributed intoxicating liquors or drugs for  
31 other than lawful purposes;

32 (4) is found to be mentally or physically incapacitated to such a  
33 degree that in the opinion of the board continued practice by the licensee  
34 would constitute a danger to public health and safety;

35 (5) has aided and abetted a person who is not a licensee under this  
36 act, and amendments thereto, or is not otherwise authorized to perform  
37 the duties of a licensee;

38 (6) has had a license, certification, or registration to practice  
39 acupuncture or oriental medicine revoked, suspended or limited, has been  
40 censured or has had other disciplinary action taken by the proper  
41 licensing, certification or registration authority of another state, territory,  
42 District of Columbia, or other country; a certified copy of the record of an  
43 action of the other jurisdiction being conclusive evidence thereof;

1 (7) has had an application for a license, certification or registration  
2 of acupuncture or oriental medicine denied, by the proper licensing,  
3 certifying, or registration authority of another state, territory, District of  
4 Columbia, or other country; a certified copy of the record of an action of  
5 the other jurisdiction being conclusive evidence thereof;

6 (8) has violated any provision of this act, and amendments thereto,  
7 rules and regulations promulgated by the board or any lawful order or  
8 directive of the board previously entered by the board;

9 (9) has committed an act of unprofessional conduct under criteria  
10 which the board may establish by rules and regulations; or

11 (10) is, or has been, found guilty of incompetence or negligence  
12 while performing as a license holder.

13 (b) The denial, refusal to renew, suspension, limitation, probation or  
14 revocation of a license or other sanction may be ordered by the board  
15 upon a finding of a violation of this act, and amendments thereto. All  
16 administrative proceedings conducted pursuant to this act, and  
17 amendments thereto, shall be in accordance with the provisions of the  
18 Kansas administrative procedure act, and amendments thereto, and shall  
19 be reviewable in accordance with the Kansas judicial review act, and  
20 amendments thereto.

21 (c) A person whose acupuncture license is suspended shall not  
22 engage in any conduct or activity in violation of the order by which the  
23 license was suspended.

24 (d) This section shall take effect on and after July 1, 2012.

25 Sec. 14. (a) The board shall have jurisdiction of proceedings to  
26 take disciplinary action against any licensee practicing under this act, and  
27 amendments thereto. Any such action shall be taken in accordance with  
28 the provisions of the Kansas administrative procedure act, and  
29 amendments thereto.

30 (b) Either before or after formal charges have been filed, the board  
31 and the licensee may enter into a stipulation which shall be binding upon  
32 the board and the licensee entering into such stipulation, and the board  
33 may enter its findings of fact and enforcement order based upon such  
34 stipulation without the necessity of filing any formal charges or holding  
35 hearings in the case. An enforcement order based upon a stipulation may  
36 order any disciplinary action against the licensee entering into such  
37 stipulation.

38 (c) The board may temporarily suspend or temporarily limit the  
39 license of any licensee in accordance with the emergency adjudicative  
40 proceedings under the Kansas administrative procedure act, and  
41 amendments thereto, if the board determines that there is cause to believe  
42 that grounds exist for disciplinary action against the licensee and that the  
43 licensee's continuation of practice would constitute an imminent danger

1 to public health and safety.

2 Sec. 15. (a) Professional liability insurance coverage shall be  
3 maintained in effect by each licensed acupuncturist and as a condition to  
4 rendering professional services as a licensed acupuncturist in the state of  
5 Kansas. The board shall fix by rules and regulations the minimum level  
6 of coverage for such professional liability insurance.

7 (b) This section shall take effect on and after July 1, 2012.

8 Sec. 16. (a) The confidential relations and communications  
9 between a licensed acupuncturist and the acupuncturist's patient are  
10 placed on the same basis as provided by law as those between a physician  
11 and a physician's patient in K.S.A. 60-427, and amendments thereto.

12 (b) The provisions of this section shall take effect on and after July  
13 1, 2012.

14 Sec. 17. (a) When it appears that any person is violating any  
15 provision of this act, and amendments thereto, the board may bring an  
16 action in the name of the state in a court of competent jurisdiction for an  
17 injunction against such violation without regard as to whether  
18 proceedings have been or may be instituted before the board or whether  
19 criminal proceedings have been or may be instituted.

20 (b) This section shall take effect on and after July 1, 2012.

21 Sec. 18. On and after July 1, 2012, any violation of this act, and  
22 amendments thereto, shall constitute a class B misdemeanor.

23 Sec. 19. If any section of this act, and amendments thereto, or any  
24 part thereof, is adjudged by any court of competent jurisdiction to be  
25 invalid, such judgment shall not affect, impair or invalidate the remainder  
26 or any other section or part thereof.

27 Sec. 20. This act shall take effect and be in force from and after its  
28 publication in the statute book.

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